

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 311, “Renewable Fuel Infrastructure Board—Organization,” Chapter 312, “Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites,” Chapter 313, “Renewable Fuel Infrastructure Program for Biodiesel Terminal Grants,” and Chapter 314, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7074B** on August 13, 2008.

The amendments implement recent legislative changes as authorized in 2008 Iowa Acts, House File 2689. The amendments include updating Iowa Code citations; adding definitions for “biofuel,” “biodiesel blended fuel,” “person,” “renewable fuel” and “tank vehicle”; incorporating the option of a three-year or five-year grant period; including the option of using an independent certified testing laboratory or Underwriter Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher; and listing requirements for award amounts for retail sites, terminal facilities for biodiesel B2 through B98 and B99/B100 for year-round distribution and tank vehicles.

A public hearing was held on Wednesday, September 3, 2008. The Department received the following comments:

- Some commenters said that it was their opinion that a “person” can be awarded one tank vehicle to store and dispense E-85 and one tank vehicle to store and dispense biodiesel, according to House File 2689, section 27, which would allow a maximum of two awards per “person” for tank vehicles. (Source: Letter from Senators Amanda Ragan and David Johnson.)

- Four organizations supported allowing a person who received a tank vehicle award prior to May 12, 2008, to receive an additional tank vehicle to store and dispense E-85 and one tank vehicle to store and dispense biodiesel. (Source: Public Hearing held September 3, 2008.)

- One organization contended that House File 2689, section 27, was retrospective, dating back to July 1, 2006.

To help resolve this conflicting interpretation of the statutory amendments, IDED requested an informal opinion from the Iowa Attorney General’s office. The question was whether there is an overall maximum cap of no more than two grants for tank vehicles per applicant or if the “no more than two” limitation only applied to applications after the effective date of the statutory changes; thus allowing more than two tank vehicle grants.

The Attorney General’s office informally advised that House File 2689 does not expressly state that there is a “limit of two, one of each” tank vehicle, and it does not contain language indicating that the Legislature intended for the limitation to be applied retrospectively. Therefore, the Renewable Fuel Infrastructure Board should allow applicants who already have tank vehicle grants to apply for additional tank vehicle grants.

As a result of these comments, subparagraph 314.2(3)“c”(3) was amended to clarify that a person who has received an award for a tank vehicle(s) prior to May 12, 2008, is eligible to apply for an additional tank vehicle. Subparagraph 314.2(3)“c”(3) now reads as follows:

“(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.”

The Iowa Economic Development Board adopted these amendments on December 18, 2008.

These amendments are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)“f.”

These amendments will become effective on February 18, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 311 to 314] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 7074B**, IAB 8/13/08.

[Filed 12/19/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]